

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN ZUNIGA, JR.,

Defendant and Appellant.

B164982

(Los Angeles County
Super. Ct. No. KA052853)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert C. Gustaveson, Judge. Affirmed.

Richard L. Fitzner, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

John Zuniga, Jr., appeals the judgment (order revoking probation) entered after conviction following plea of no contest to corporal injury of a child. (Pen. Code, § 273d, subd. (a).) The trial court sentenced Zuniga to a term of six years in state prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The report of the probation officer indicates that on June 11, 2001, Zuniga beat his 16-year-old son who, along with the boy's mother, Zuniga's spouse, was in the process of packing to leave Zuniga.¹ On August 2, 2001, Zuniga pleaded no contest to one count of corporal injury to a child. The trial court imposed a suspended term of six years in state prison and granted Zuniga probation on condition, among other things, that he serve one year in the county jail, obey all laws and orders of the court, not associate with and stay at least 100 yards from the victim and the victim's mother, and attend anger management, family counseling and a minimum 52-week domestic violence counseling program.

On January 14, 2003, the trial court conducted a probation violation hearing. Deputy probation officer Earl Estell testified Zuniga had been convicted in two new cases since the grant of probation. Both cases involved violation of the trial court's restraining order and one case also included allegations of vandalism. The first incident occurred on August 22, 2002, and the second took place approximately two months later on October 26, 2002. Additionally, Zuniga had not enrolled in domestic violence counseling.

Zuniga testified in his own behalf that he had enrolled in domestic violence counseling prior to his arrest on the new cases but was only able to complete 17 classes and that he completed a parenting class while he was in county jail. One of

¹ The factual summary of the underlying offense is based on the report of the probation officer because Zuniga pleaded no contest prior to the preliminary hearing.

Zuniga's new cases arose when he went to his former residence to fix a broken pipe. When Zuniga's son returned home and found Zuniga at the residence, he called the police. Zuniga was not aware his guilty plea in the two new cases might cause revocation of probation in this case. Zuniga just wanted to get those cases finished. Zuniga denied he accused his wife of infidelity during the August 2002 incident.

The trial court found Zuniga in violation of probation and imposed the six-year suspended term with credit for time served.

CONTENTIONS

We appointed counsel to represent Zuniga on this appeal. After examination of the record, counsel filed an opening brief in which no issues were raised and which requested this court to conduct an independent review of the record.

On May 23, 2003, Zuniga filed a supplemental opening brief in which he contends the trial court erroneously found him in violation of probation and the term imposed is excessive.

DISCUSSION

1. *The trial court properly found Zuniga in violation of probation.*

Zuniga contends he was involved in domestic violence counseling at the time of the probation violation hearing and his previous failure to complete domestic violence counseling was attributable to his incarceration on the new misdemeanor cases. Further, deputy probation officer Estell told Zuniga, before Zuniga was released from county jail on the new cases, that Estell was not going to place a probation hold on Zuniga. Zuniga asserts Estell should have placed a hold on Zuniga if Estell intended to violate Zuniga. Zuniga asserts he attended 17 domestic violence counseling sessions at the Inland Valley Recovery Center. Based on these considerations, Zuniga claims the trial court should not have found Zuniga in violation of probation.

Assuming for the sake of discussion that Zuniga was in compliance, or had good cause for not being in compliance, with the condition of probation that required Zuniga to attend domestic violence counseling, the trial court nonetheless properly could find Zuniga in violation of probation based on Zuniga's two new misdemeanor convictions. These new offenses not only violated the condition of probation that required Zuniga to obey all laws but also violated the trial court's specific order that Zuniga stay away from his former residence. Thus, the record abundantly supports the trial court's finding that Zuniga was in violation of probation. The fact Estell did not place a probation hold on Zuniga before Zuniga's release from county jail on the new cases is inconsequential.

2. The term imposed is not excessive.

Zuniga claims the maximum term of six years for two misdemeanor convictions is unfair. Zuniga requests a reduced term or reinstatement of probation.

In order to address this contention, we note this was not Zuniga's first episode of domestic violence. In addition to a long list of narcotics related offenses, the report of the probation officer reveals Zuniga was convicted of corporal injury to a spouse in 1993 and 1999. Zuniga went to prison for two years on the 1993 conviction. Placed in this context, it is obvious that violation of the stay away order in this case created a documented danger of domestic violence even though, on these two particular occasions, no violence resulted. Given Zuniga's history of crimes of domestic violence and his repeated violation of the trial court's stay away order, the six-year term imposed is not unfair or excessive.

3. Review of the record by this court.

We have examined the entire record and are satisfied Zuniga's counsel has complied fully with counsel's responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment (order revoking probation) is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P.J.

We concur:

CROSKEY, J.

ALDRICH, J.